

Appl. No. 10/777,079  
Amdt. dated February 12, 2008  
Reply to O.A. of December 27, 2007

### Remarks

In the Office action dated December 27, 2007, pending claims 1-6 and 8-23 were rejected. Upon entry of this Amendment, claims 1-6 and 8-23 are pending and under consideration in the present application. Applicant respectfully traverses and requests reconsideration and withdrawal of the rejection of claims 1-6 and 8-23 as obvious over Hennart et al. in view of Miller et al.

According to the Office action, Hennart et al. discloses "an evaporative device in the form of an apparatus for diffusion of volatile liquids...." The Office action admits that Hennart et al. "does not particularly disclose that the evaporator (9) has a nonporous capillary channel." To remedy this deficiency of Hennart et al., the Office action cites Miller et al. for its disclosure of "a nonporous capillary member (17) that can be in the form of grooves to function as conduits ... which contact the wick and is capable of transferring liquid from the wick for dispersion into the environment, the capillary member is inserted over the wick, winged shaped ... and the material that can make up the capillary member can be polyethylene...."

Applicants take the position that there is no *prima facie* case of obviousness for the present claims over Hennart et al. in view of Miller et al. The Office action contends that "it would have been an obvious matter of design choice to modify the evaporator (9) of Hennart et al. by substituting the nonporous capillary channel teaching of Miller et al., as the diffusing means of volatile liquids...." The basis for this rejection stated in the Office action is that: 1) the applicants have not disclosed having a capillary member (or a dispensing member) having a nonporous capillary channel solves any stated problem or it is for any particular purpose, and 2) it appears that the evaporator surface of Hennart et al. would perform equally well with its current materials of wood and cotton which is identical to that of the wick.

The first basis for the Office action rejection noted above breaks down in light of the fact that the applicant discloses at paragraph [0038] of the current specification that by using a porous wick and a capillary member having a nonporous capillary channel, that a:

liquid is introduced to the ambient air via both the outer surface of the wick 3  
and the capillary plate 6 . . . [, and] the addition of the capillary channels 7

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causes the release of the liquid . . . at a more constant rate than can be achieved through the use of only a wick 3. Essentially, this configuration allows for an increased, substantially constant emanation rate.

Applicants respectfully contend that this disclosure illustrates that the claimed evaporative device solves at least one problem and is for at least one purpose.

The second basis for the Office action rejection breaks down in view of the fact that Hennart et al. teaches away from using nonporous vapor emanating means. Hennart et al. provides a lengthy discussion of the defects of the prior art. Hennart et al. proposes to remedy these defects by providing an apparatus with a wick and evaporator made of porous or fibrous structures (See, Hennart et al., col. 4, ln. 20 and lns. 34-37). In attempting to remedy the defects of the prior art, Hennart et al. focuses on the importance of using porous wicks and that it is critical not to use nonporous material as the evaporative surface. Specifically, Hennart et al. states that an "advantage of evaporators with wicks resides in the possibility . . . of obtaining evaporation rates constant in time, as opposed, for example, to [an] apparatus constituted by an . . . adsorbate. . . ." (Hennart et al., col. 1, lns 14-18) As defined by McGraw-Hill Dictionary of Scientific and Technical Terms, sixth edition, in reference to liquids, an adsorbate includes a liquid which is adsorbed as molecules, atoms, or ions by, for example, metals. Adsorption is the surface retention of liquid molecules by a solid, as opposed to absorption, which is the penetration of the substances into the bulk of the solid. Therefore, in light of the above teaching of Hennart et al., substituting the Miller et al. teaching of using adsorption means as the diffusing means of volatile liquids would not appear to perform equally as well as the materials of wool and cotton of Hennart et al. Further, it would appear that Hennart et al. teaches one skilled in the art not to use an adsorptive structure, i.e., a nonporous structure such as the polyethylene disclosed in Miller et al., as an evaporative surface.

In addition, neither Hennart et al. nor Miller et al. shows a wick that includes an aperture formed in a portion of the wick in an axial direction and a capillary insert with at least one capillary channel disposed within the aperture such that the at least one capillary channel is in contact with an inner surface of the wick, as recited in claims 22 and 23. The examiner puts forth no argument that even addresses this claim recitation. "To support the conclusion that the

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claimed invention is directed to obvious subject matter, either the references must expressly or impliedly suggest the claimed invention or the examiner must present a convincing line of reasoning as to why the artisan would have found the claimed invention to have been obvious in light of the teachings of the references." MPEP § 706.02(j) citing *Ex parte Clapp*, 227 USPQ 972, 973 (Bd. Pat. App. & Inter. 1985). Therefore, for at least these additional reasons, claims 22 and 23 are allowable over the references cited.

Further, the December 27, 2007 Office action provides no evidence to suggest the recited claimed evaporative device. Moreover, the December 27, 2007 Office action does not establish that there is an identified, predicted solution or that there was a design need or market pressure to make the apparatus of Hennart et al. with the modification of Miller et al. to arrive at the claimed evaporative device of claims 1, 4, 12, 15, 22 or 23. Still further, there is no reasonable basis provided in the Office action that one skilled in the art would have pursued the known options within his or her technical grasp to make the proposed modification of Hennart et al. with Miller et al. to arrive at the evaporative device recited in claims 1, 4, 12, 15, 22 or 23. Therefore, the rejection of claims 1-6 and 8-23 as obvious under 35 U.S.C. § 103(a) over Hennart et al. in view of Miller et al. cannot be sustained. See *KSR Int'l Co. v. Teleflex Inc.*, 127 S. Ct. 1727, 1742 (2007). Withdrawal of the rejection of claims 1-6 and 8-23 under 35 U.S.C. § 103(a) is therefore respectfully requested.

Still further, because independent claims 1, 4, 12, 15, 22 or 23 are not disclosed or suggested by the cited art, it stands that any claim dependent on such independent claims is not disclosed or suggested by the cited art. As a result, each of claims 2-3, 5, 6, 8-11, 13, 14, 16-21 is allowable for, at least, the reasons discussed above with regard to each respective independent claim. As a result, each of claims 1-6 and 8-23 is allowable over the cited art.

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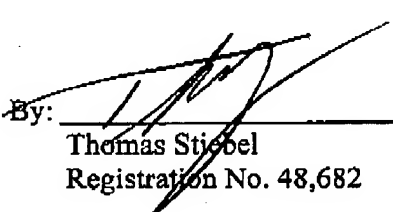
**Deposit Account Authorization**

The Commissioner is hereby authorized to charge any deficiency in any amount enclosed or any additional fees which may be required during the pendency of this application under 37 CFR 1.16 or 1.17, except issue fees, to Deposit Account No. 50-1903.

Respectfully submitted,

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